NO. 34753-2-III

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

CHRISTOPHER GLEN STANDLEY, APPELLANT

APPEAL FROM THE SUPERIOR COURT OF GRANT COUNTY

BRIEF OF RESPONDENT

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II. STATEMENT OF THE CASE[1]

A. SUBSTANTIVE FACTS—CRIMES AGAINST MS. HEDRICK

1. Assault

On the night of February 26, 2016, RP 92, Mr. Standley and Ms. Hedrick spent the night in her 2005 Chevy Impala, parked in a church parking lot behind the home of Mr. Standley's mother. RP 93. They used heroin acquired from the "Beeman house on Hill Street." RP 94. Mr. Standley became convinced Ms. Hedrick had "shorted" him, that she had taken more heroin than he thought she was entitled to. RP 94. He yelled at Ms. Hedrick and walked away from the car. RP 95. Ms. Hedrick followed, placating. *Id.* As they returned to the car, Mr. Standley continued to yell at Ms. Hedrick, then accused her of "cheating on him again." *Id.* Using a knife he carried in his pocket, Mr. Standley scratched her Impala and destroyed a tire. *Id.*

The couple returned to the Impala. RP 132. The slashed tire prevented it from being driven. RP 100. Mr. Standley had the car keys. *Id.* A child-lock device prevented anyone but the driver from opening doors from inside. RP 132–33. Ms. Hedrick was in the passenger seat. RP 132.

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[1] The State cites to trial testimony from Volume I of the report of proceedings in this case which encompasses pretrial hearings, trial, and sentencing, designated RP ____.

Once inside the car, Mr. Standley backhanded Ms. Hedrick across her face, hitting her again and again as his anger increased. RP 98. He also used his closed fist and the front of his hand. *Id.* He hit her face, her eyes, and her nose. *Id.* He hit her in the same places, over and over. *Id.* Telling her she did not deserve the boots he bought her, he pulled the boots from her feet and used one to hit her face. RP 98–99. He hit her face with an unopened can of ravioli. RP 99. He poked her leg several times with the pin of a brooch he carried. *Id.*

In addition to heroin, Mr. Standley smoked methamphetamine during the assault. *Id.* He forced the meth pipe into Ms. Hedrick's mouth a couple of times, although her drug of choice was heroin. RP 131. He burned her arm with the hot pipe. RP 99.

The entire assault took place inside the car over about an hour. RP 100. After Mr. Standley's arrest, an ambulance took Ms. Hedrick to the Samaritan hospital emergency room. RP 113–14. Ms. Hedrick's eyes were swollen, black and blue from the assault. RP 105. She was later able to feel where the bones of her eye sockets were fractured. RP 115–16. Her nose was broken. RP 116. Her mouth was bleeding, and she could feel tiny pieces of a broken tooth in her mouth. RP 118. She had severe headaches for several weeks and impaired vision for the first couple of months after

the assault. RP 115. She continued to have vision problems when reading up through the time of trial. *Id.*

2. Felony harassment

The romantic relationship between Mr. Standley and Ms. Hedrick had a violent history before the incident at issue here. RP 85. Over the course of their relationship, Mr. Standley hit Ms. Hedrick "quite a bit." RP 87. Ms. Hedrick referred to it as "jealousy rage"—Mr. Standley thought she was "cheating on him and it would go from there[.]" RP 87. Before February 27, 2016, he hit her only with his hands. RP 89. She never called the police. RP 90.

During the February 27, 2015, assault, Mr. Standley would not let Ms. Hedrick leave the car, and she was too frightened to disobey him. RP 100. Mr. Standley told her if she tried to run, she would see a shoot-out with the cops because the cops would show up. RP 142. Ms. Hedrick believed he meant she had to stay in the car, that he was threatening not just her but both of them with a shoot-out. RP 143. Ms. Hedrick understood she was not to run, to go anywhere, or to bring attention to the car. RP 143.

It was at this point Mr. Standley told her to write the letter to her "family because when the sun came up [she] wasn't going to be, [she] wasn't going to see them again." RP 107, 143. He told her they were both

going to die. RP 143. She believed him. RP 107. She had never seen him that angry and, after what he had just done to her, did not know what he was capable of. RP 107. He had the knife he used to slash her tire and told her he would stab her. RP 107. Ms. Hedrick, terrified, told him she did not want to die. RP 108.

3. Unlawful imprisonment

Eventually, the couple left the car and started walking to the Beeman house on Hill Street. RP 104. They stopped at a store around 9:00 a.m. so Ms. Hedrick could use the restroom and remove some of the extra clothing she had been wearing. RP 103–04. It was a one-person restroom. RP 106. Mr. Standley told her he was not going to let her go to the restroom by herself and followed her inside. RP 104. Ms. Hedrick was too afraid to try to talk with anyone in the store. *Id.*

At trial, defense counsel objected as cumulative to Ms. Hedrick's statement she was afraid to talk with anyone at the store. RP 105. The trial court overruled the objection, noting: "The question had to do with now at this point, using the restroom, what were her feelings and that's a different place and time, so I'll allow the question." RP 105.

The walk to the Beeman house took about an hour. RP 106. At no time during the trek did Mr. Standley leave Ms. Hedrick alone. RP 130–31. When the couple arrived at the Beeman house, Mr. Standley was

"very, very angry." RP 110. He told Ms. Hedrick if she "tried to move or anything, he'd leave [her] in the house on the floor." RP 110.

4. Attempted promoting prostitution in the first degree

While walking to Hill Street, Mr. Standley told Ms. Hedrick "something along the lines of you've taken enough money from me over our relationship, now I'm going to get my money's worth out of you." RP 108. He told her he wanted her to "hook [herself] out," to have sex with other men for money. RP 109. She objected and he told her she did not have a choice. *Id.* He was going to make her walk up to a man and ask if he wanted to have sex for money, and he planned to stand behind her until she obeyed. *Id.* He went so far as to point out "one random guy" in the parking lot of the store where Ms. Hedrick had just used the restroom. RP 144. Ms. Hedrick refused; he told her "do it," she said no again, and they continued walking. *Id.* The couple argued as they were still walking and Mr. Standley hit Ms. Hedrick. RP 108. Ms. Hedrick did not think anybody saw him hit her. *Id.*

B. SUBSTANTIVE FACTS—ASSAULT ON MR. BEEMAN

Mr. Standley and Ms. Hedrick bought heroin from Mason Beeman numerous times over five or six months. RP 111, 129. After assaulting Ms. Hedrick, Mr. Standley became determined to talk with Mr. Beeman "to get to the bottom of why [the package of heroin] looked short. RP 110. When

Mr. Standley arrived at Mason Beeman's house, he was "angry – very, very angry." RP 110.

As was the custom with visitors to the Beeman house, RP 134, Mr. Standley and Ms. Hedrick entered the house without knocking and went directly to Mason Beeman's bedroom. RP 111. Mr. Beeman let them in. RP 111. Nobody else was in the room. *Id.* Mr. Standley demanded to know why the bag was short. RP 112. Mr. Beeman stood up, and a heated argument ensued. *Id.* Yelling escalated into pushing. RP *Id.* At some point, Mr. Standley brandished a knife. RP 179. He held the knife in the palm of his hand with the blade sticking out between two of his fingers. RP 180. Mr. Beeman demonstrated at trial, pushing his thumb—representing the knife blade—between his ring finger and middle finger, his hand held in a fist. RP 207–08. The knife was "T" shaped, the handle held in the palm of Mr. Standley's hand. RP 208.

Mr. Beeman picked up his hand-held stun gun, put it against Mr. Standley's neck and pushed the button. RP 209. The machine crackled and popped a little bit. RP 209. Mr. Standley said: "You're going to try to tase me?" and stabbed Mr. Beeman with a punch motion to the face. RP 180. The stun gun did not seem to have had any effect on Mr. Standley. RP 209. The blade hit Mr. Beeman's eye socket, and the tip caused a smaller cut by the eye from the inside out as it pierced his face. RP 193–94. Mr.

Beeman said that was when he punched Mr. Standley, causing Mr. Standley to fall into the refrigerator. RP 181. Mr. Beeman hit Mr. Standley several times, threw him out the door of his bedroom and then down the stairs. RP 181. The men were screaming at each other. RP 113. Mr. Beeman's father woke up and tried to break up the fight, which lasted just a few minutes. RP 113.

Mr. Beeman suffered a large gash to his cheek and the smaller cut close to his eye. RP 184. He was bleeding heavily. RP 185, 201. He was also heavily bruised. RP 185, Ex. 24. At Samaritan Hospital, the emergency room doctors sedated and intubated Mr. Beeman out of concern his airways might swell. RP 185. A MediStar helicopter flew Mr. Beeman to Sacred Heart Hospital in Spokane. RP 185. There, he remained unconscious in Intensive Care for six or seven days. RP 187–88. He remained a few more days after regaining consciousness. RP 188. A plastic surgeon stitched his face closed and provided multiple follow-up treatment sessions. RP 191. She prescribed "very expensive creams and bandages that help reduce scarring and swelling, redness." RP 191. The surgeon did not believe the scar would ever be completely gone. RP 191.

C. PROCEDURAL FACTS—FINDINGS AND CONCLUSIONS

1. Findings of Fact

After having heard all of the facts recited above, the trial court orally found Ms. Hedrick an extremely credible witness. RP 324, 338.

The court found Ms. Hedrick reasonably believed Mr. Standley's threat to kill her. RP 337. She reasonably believed he would kill her with a knife. *Id.* The court found his threats were serious, not idle talk. *Id.* The court further found Mr. Standley's unlawful imprisonment of Ms. Hedrick was not the result of her fear he would hurt her worse than he already had if she tried to leave. RP 338. The court found her fear, by itself, did not constitute force or an actual threat. *Id.* The court found Mr. Standley's statement that they would die in a shootout with the police was a threat of force, "that if she left that car that she was imprisoned in, she would die." *Id.*

The court found Mr. Standley forced Ms. Hedrick on a several hour "walk or march" across town to Mr. Beeman's house. RP 325. By then it was early morning. *Id.* The court found Mr. Standley continued to strike Ms. Hedrick during the walk, that he ordered her to prostitute herself, and that he followed her into the restroom at the JoAnn's Fabric Shop. *Id.*

Addressing count 6, attempted first-degree promoting prostitution, the court orally announced the State needed to prove Mr. Standley knowingly advanced prostitution by taking a substantial step toward

compelling Ms. Hedrick by threat of force to prostitute herself. RP 335–36. The court did not find Mr. Standley's general threats that Ms. Hedrick should prostitute herself, without reference as to when, where, or with whom, to be a substantial step. RP 336. The court had no question, however, that Mr. Standley took a substantial step when he pointed out the man in the JoAnn's Fabric Store parking lot and directed Ms. Hedrick to approach him. *Id.* The court found Mr. Standley said this in all seriousness and it was not puffery and he was not joking." *Id.* The court found Mr. Standley

> "was not making a mere request, rather he was demanding that she engage in prostitution and these demands were made within the events in which he terrorized and repeatedly, brutally, and violently attacked her. This was an attempt to compel her into an act of submission and prostitution by threat or force.

Id. The court orally concluded Mr. Standley was guilty of attempted first degree promoting prostutution. *Id.*

The court's written findings of facts and conclusions of law concerning count 6 were:

Finding 18: "During the walk, Mr. Standley struck Ms. Hedrick at least once, and told her that she would have to prostitute herself to make money that she owed him[.]" CP 23.

Finding 19: "At one point, Mr. Standley identified a male individual and told Ms. Hedrick that she needed to approach him and offer to sell him sexual favors. Ms. Hedrick refused to do so." CP 23.

Conclusion 8: The defendant took a substantial step in promoting prostitutiuon by commanding Ms. Hedrick to approach a specific individual t offer sexual favors for money[.]" CP 26.

Addressing Mr. Standley's assault of Mr. Beeman, the trial court recited the three different versions given by Ms. Hedrick, Mr. Beeman, and Mr. Standley. RP 326–28. The trial court found Mr. Beeman lacked credibility, but was nowhere near as lacking as Mr. Standley. RP 329. The court gave a detailed recitation of its issues with Mr. Standley's credibility when it rejected his self-defense argument. RP 329–31. The court found evidence about the "punch" knife was sufficient to support the second-degree assault conviction, but not the special allegation Mr. Standley was armed with a deadly weapon. RP 333. The court also found Mr. Standley inflicted substantial bodily harm on Mr. Beeman. *Id.* The courts written findings and conclusions include:

Finding 24: "Mr Standley punched Mr. Beeman under the eye while holding [the] knife;" CP 24.

Finding 30: "Mr. Beeman was immediately taken to Samaritan Hospital in Moses Lake, and then airlifted to Sacred Heart, where he was in the Intensive Care Unit for a few days;" CP 25.

Finding 34: "The court found that it did not appear to Mr. Beeman that the stun gun had any effect on Mr. Standley which was consistent with Mr. Beeman's belief that Mr. Standley was under the influence of some drug;" CP 25.

Conclusion 3: The assault of Mr. Beeman by Mr. Standley did result in substantial bodily harm;" CP 26

Conclusion 4: The assault of Mr. Beeman by Mr. Stnadley did involve a deadly weapon for purposes of the elements of Assault 2;" CP 26.

Conclusion 14: "The defenant is guilty of counts two and three involving Mr. Beeman, which are alternative counts and encompass; [sic]" CP 14.

Addressing Mr. Standley's assault on Ms. Hedrick, the court unequivocally found Mr. Standley guilty. RP 335. The court found overwhelming evidence Ms. Hedrick suffered substantial bodily harm "as previously described." *Id.* "She suffered temporary disfigurement to her face, as demonstrated by the pictures and testimony." *Id.* The court's written findings included:

Finding 9: While in the car, the defendant engaged in an hour long brutal attack of Ms. Hedrick predicated upon Mr. Standley's belief that Ms. Hedrick had stolen some of his drugs." CP 22.

Finding 10: "The attack by Mr. Standley began with closed fists, and then as the violence intensified, progressed to him striking Ms. Hedrick with her own boots, as well as a full can of ravioli;" CP 22.

Finding 11: "Mr. Standley repeatedly poked Ms. Hedrick in the leg with a pin, and burned her arm with a meth pipe." CP 22.

Finding 29: "Ms. Hedrick . . . had sustained facial bruising, and chipping of multiple teeth." CP 24.

Conclusion 7: "The assault of Ms. Hedrick by Mr. Standley did result in substantial bodily harm." CP 26

Conclusion 15: "The defendant is guilty of counts five [second degree assault/substantial bodily harm], six [attempted promoting prostitution, first degree], seven [harassment/threat to kill], and eight [unlawful imprisonment] involving Ms. Hedrick;" CP 27.

The trial court orally found "Mr. Standley threatened to kill Ms. Hedrick during the incident in the car and after she was severely beaten for an hour." RP 337. The court found Ms. Hedrick had never seen him so violent. *Id.* The court found Mr. Standley ordered Ms. Hedrick "write a note to her mother because when the sun came up, she was going to be

dead." *Id.* Ms. Hedrick believed him and her belief was reasonable. *Id.* "The threats were serious and not idle talk." *Id.*

The court's written findings and conclusions concerning Mr. Standley's threats to kill Ms. Hedrick include:

Finding 13: "Mr. Standley told Ms. Hedrick to write a letter to her parents before the sun came up, and told her that if law enforcement appeared, they would die together in a shootout;

Finding 14: "Mr. Standley had a knife, which he used to scratch Ms. Hedrick's car, as well as to flatten one of the car's tires;"

Conclusion 9: "The defendant's threats to kill Ms. Hedrick were in the context of such violence that she took them seriously. Ms. Hedrick's belief was reasnable in the context of Mr. Standley's statements and behaviors[.] CP 26.

III. ARGUMENT

A. SUFFICIENT, UNEQUIVOCAL EVIDENCE SUPPORTS EACH OF MR. STANDLEY'S CHALLENGED CONVICTIONS, SO REMAND FOR THE TRIAL COURT'S CONSIDERATION OF SUPPLEMENTAL FINDINGS AND CONCLUSIONS IS THE APPROPRIATE REMEDY FOR INSUFFICIENT OR MISSING FINDINGS.

When a trial court's conclusion that a defendant is guilty of a particular crime omits a finding on an element necessary to support that conclusion, remand is required if the record contains sufficient evidence supporting the conviction. *State v. Alvarez*, 128 Wn.2d 1, 19–22, 904 P.2d

754 (1995); *State v. Avila*, 102 Wn. App. 882, 886–87, 896–97, 10 P.3d 486 (2000), *review denied*, 143 Wn.2d 1009 (2001). When the omitted finding is "an inadvertent error rather than a determination that the State failed to meet its burden of proof on the element, the trial court has the discretion to supply the omitted finding." *State v. A.M.*, 163 Wn. App. 414, 425–26, 260 P.3d 229 (2011). "Remand is allowed because the omission is inconsistent with the conclusion of guilt." *Id.*

The ultimate question before this Court, then, is whether sufficient evidence supports the trial court's unequivocal conclusions Mr. Standley is guilty of attempting to promote prostitution in the first degree (count 6), second-degree assault against Mr. Beeman (count 2) and Ms. Hedrick (count 5), and felony harassment (count 7).

Following a bench trial, reviewing courts determine whether substantial evidence supports challenged findings of fact and whether the findings support the trial court's conclusions of law. *State v. Alvarez*, 105 Wn. App. 215, 220, 19 P.3d 485 (2001). "'Substantial evidence' is evidence sufficient to persuade a fair-minded, rational person that the findings are true." *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). The reviewing court defers to the trial court's resolution of conflicting evidence and credibility determinations. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Here, because sufficient evidence supports each of the four contested convictions, any defects or omissions in the findings and conclusions may be supplemented on remand at the trial court's discretion.

1. Sufficient facts support Mr. Standley's conviction for attempting to promote prostitution in the first degree (count 6).

Mr. Standley asserts his conviction violated his Fourteenth Amendment right to due process because it was based on insufficient evidence, that the state failed to prove and the court failed to find he acted with specific intent to commit the completed crime. (Assignments of Error 1 – 3.)[2]

Only Assignment 3—that the court failed to enter a written finding Mr. Standley acted with specific intent to promote prostitution—has any merit whatsoever. Its merit is limited, however, to the bare fact that the court inadvertently omitted the necessary finding from its written Findings of Fact and Conclusions of Law. The State produced sufficient, unequivocal evidence to support the court's finding that Mr. Standley acted with specific intent to promote prostitution. The court's related oral findings indicate the court also made the finding of specific intent.

A person is guilty of attempting to promote prostitution in the first

[2] Mr. Standley identified 24 assignments of error related to his seven identified issues. He failed to address a number of these assignments in his brief. The State responds only to those assignments of error addressed in the body of Mr. Standley's brief.

degree when, intending to advance prostitution by compelling a person by threat or force to engage in prostitution, he does any act which is a substantial step toward the commission of that crime. RCW 9A.88.070(1)(a); 9A.28.020(1). Here, the underlying question is whether sufficient, unequivocal evidence demonstrates Mr. Standley's intent to advance prostitution. It does.

While walking to Hill Street, Mr. Standley told Ms. Hedrick "something along the lines of you've taken enough money from me over our relationship, now I'm going to get my money's worth out of you." RP 108. He told her he wanted her to "hook [herself] out," to have sex with other men for money. RP 109. She objected and he told her she did not have a choice. *Id.* He was going to make her walk up to a man and ask if he wanted to have sex for money, and he planned to stand behind her until she obeyed. *Id.* He went so far as to point out "one random guy" in the parking lot of the store where Ms. Hedrick had just used the restroom. RP 144. Ms. Hedrick refused; he told her "do it," she said no again, and they continued walking. *Id.* As they continued walking, the couple argued and Mr. Standley hit Ms. Hedrick. RP 108. Ms. Hedrick did not think anybody saw him hit her. *Id.*

Where a trial court's written findings are incomplete or inadequate, the trial court's oral findings are available to aid review. *State v.*

Robertson, 88 Wn. App. 836, 843, 947 P.2d 765 (1997), *review denied*, 135 Wn.2d 1004 (1998). The court orally found Mr. Standley had been in an uncontrolled, violent rage in the several hours leading up to his assault on Mr. Beeman. RP 329. The court found Mr. Standley

> was not making a mere request, rather he was demanding that [Ms. Hedrick] engage in prostitution and these demands were made within the events in which he terrorized and repeatedly, brutally, and violently attacked her. This was an attempt to compel her into an act of submission and prostitution by threat or force.

Id. This finding implicitly finds Mr. Standley intended Ms. Hedrick prostitute herself. The court did not equivocate. It did not say Mr. Standley's intent might have been merely to humiliate Ms. Hedrick, as Mr. Standley now argues. Sufficient evidence supports the court's finding.

Where there is no direct evidence of an actor's intended objective or purpose, intent may be inferred from circumstantial evidence. *State v. Caliguri*, 99 Wn.2d 501, 505, 664 P.2d 466 (1983). It may be inferred from all the facts and circumstances surrounding the commission of an act or acts, regardless of whether the charge is for an attempt or a completed crime. *State v. Lewis*, 69 Wn.2d 120, 123, 417 P.2d 618 (1966). Intent may be inferred from an actor's conduct where it is plainly indicated as a matter of logical probability. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997).

Mr. Standley's own words, and the circumstances under which he uttered them, leave no doubt he intended to force Ms. Hedrick to prostitute herself. The fact that he intended to shame her, to degrade her, to force her to submit, does not render this evidence equivocal. He was in a prolonged rage over his drug-fuddled belief somebody cheated him out of his fair share of heroin. He expanded his fury to include a more general complaint Ms. Hedrick had received undeserved largesse from him over the course of their relationship. He wanted his money back. He wanted somebody to be responsible for the missing heroin.

Mr. Standley had been beating and berating Ms. Hedrick for hours. RP 98–99. He had destroyed one of her tires and scratched her car. RP 95. He refused to let her go by herself into the bathroom in JoAnn's fabric store. RP 103–04. The trial evidence shows she was compliant, fearful, and placating. It is reasonable to infer that at the time he commanded Ms. Hedrick to approach the "random guy" in the JoAnn's parking lot, Mr. Standley had no reason to believe she would disobey him. A contrary intent cannot be inferred from the fact he chose not to beat the tar out of her in a commercial parking lot in broad daylight.

The appropriate remedy for an inadvertently-omitted finding is to remand the matter to the trial court for supplemental findings reflecting the evidence already in the record. *A.M.*, 163 Wn. App. at 425–26.

Mr. Standley also alleges the court erred in finding "During the walk, Mr. Standley struck Ms. Hedrick at least once, and told her that she would have to prostitute herself to make money that she owed him[]" and that: "At one point, Mr. Standley identified a male individual and told Ms. Hedrick that she needed to approach him and offer to sell him sexual favors. Ms. Hedrick refused to do so." Br. of Appellant at 1. "[R]eview of challenged factual findings is limited to determining whether the findings are supported by substantial evidence." *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 679, 101 P.3d 1 (2004). "The party challenging a factual finding bears the burden of proving that it is not supported by substantial evidence in the record." *Id.* Mr. Standley has failed argue how the court erred with these two findings, findings supported by Ms. Hedrick's credible testimony. He fails to meet his burden.

2. The court found facts sufficient to convict Standley of second-degree assault (counts 2 and 5) and felony harassment (count 7).

a. Second-degree assault

Mr. Standley assigns error to the court's failure to specifically find Mr. Standley recklessly inflicted substantial bodily harm when he intentionally assaulted both Mr. Beeman (count 2) and Ms. Hedrick (count 5). Br. of Appellant at 10. The court's failure to find recklessness in either count is clearly another inadvertent omission. Those findings are implicit

in the court's related written findings and conclusions and are supported by substantial evidence. The court found "Mr. Standley punched Mr. Beeman under the eye while holding [the] knife[.] Finding 24; CP 24. "Mr. Beeman was immediately taken to Samaritan Hospital in Moses Lake, and then airlifted to Sacred Heart, where he was in the Intensive Care Unit for a few days;" Finding 30; CP 25. "The assault on Mr. Beeman by Mr. Standley did result in substantial bodily harm." Conclusion 3; CP 26.

The court orally found "overwhelming evidence" Ms. Hedrick suffered substantial bodily harm. RP 335. "She suffered temporary disfigurement to her face, as demonstrated by the pictures and testimony." *Id.* The court's written findings included Finding 9: "While in the car, the defendant engaged in an hour long brutal attack of Ms. Hedrick predicated upon Mr. Standley's belief that Ms. Hedrick had stolen some of his drugs." CP 22. The court also found: "The attack by Mr. Standley began with closed fists, and then as the violence intensified, progressed to him striking Ms. Hedrick with her own boots, as well as a full can of ravioli;" Finding 10; CP 22. "Mr. Standley repeatedly poked Ms. Hedrick in the leg with a pin, and burned her arm with a meth pipe." Finding 11; CP 22. Finally, "Ms. Hedrick . . . had sustained facial bruising, and chipping of multiple teeth." Finding 29; CP 24. Again, the court's finding that Mr.

Standley recklessly inflicted this bodily harm is implicit in the its oral and written findings.

The court's omissions were inadvertent. Remand for the trial court's consideration of correction and supplementation of the findings is appropriate.

b. Felony harassment

The court's findings of fact concerning Mr. Standley's felony harassment conviction should be supplemented to reflect the substantial evidence in the record demonstrating Mr. Standley made a "true threat" when he told Ms. Hedrick she would be dead before sunrise. RP 107, 143. Mr. Standley first told Ms. Hedrick if she tried to run, she would see a shoot-out with the cops because the cops would show up. RP 142. Ms. Hedrick believed he meant she had to stay in the car, that he was threatening not just her but both of them with a shoot-out. RP 143. Mr. Standley argues this, by itself, is not a threat to kill, but only a "prediction or warning that they would both die at the hands of the police." Br. of Appellant at 11. Mr. Standley cuts too fine a hair.

A person is guilty of harassment when the person knowingly threatens to cause bodily injury immediately or in the future. RCW 9A.46.020(1)(a)(i). Mr. Standley appears to argue that promising "death by shoot-out" is not a threat to harm, only a "prediction or warning." He

apparently argues that white, male drug addicts who come in contact with law enforcement will be shot to death in a hail of bullets without any precipitating action on their part. He ignores the fact that he, and only he, would have been the but-for cause of the predicted rain of lead in which Ms. Standley would lose her life. Whether a fatal shoot-out occurred would be entirely under Mr. Standley's control, a fact he knew when he threatened Ms. Hedrick. He effectively said: "If you call the cops, I will make sure you die." Whose bullet would accomplish the fatal deed is irrelevant.

It also appears Mr. Standley's threat did not remain anchored to an attempted escape. It was after Mr. Standley told Ms. Hedrick what would happen if she escaped and called for help that he told her to write the letter to her parents. At some point, Ms. Hedrick believed she would die, regardless of what she did. RP 107–08. Ms. Hedrick had never seen him as angry as he was that night and did not know what he was capable of. RP 107. He had already slashed her tire. *Id.* He told Ms. Hedrick he would stab her and she, terrified, responded she did not want to die. RP 108.

Substantial evidence supports findings that Mr. Standley conveyed a true threat under circumstances where he fully intended Ms. Hedrick to interpret his statement as a serious expression of his intent to kill her if she did not do exactly as he ordered her to do. The couple was parked in a car

in an empty parking lot in the middle of the night. RP 93. Mr. Standley had already beaten Ms. Hedrick. RP 98–99. He had destroyed her tire with a knife. RP 107. The evidence in the record is sufficient to support supplemented findings that Mr. Standley threatened to kill Ms. Hedrick and his statement was a "true threat."

B. THE TRIAL COURT VIOLATED THE FIFTH AND FOURTEENTH AMENDMENT PROHIBITION AGAINST DOUBLE JEOPARDY WHEN IT FAILED TO VACATE ONE OF THE CONVICTIONS FOR SECOND-DEGREE ASSAULT ON MR. BEEMAN.

The State agrees both our federal and state constitutions prohibit being punished multiple times for the same offense. *State v. Fuller*, 169 Wn. App. 797, 832, 282 P.3d 126 (2012) (citing *State v. Turner*, 169 Wn.2d 448, 454, 238 P.3d 461 (2010) (quoting *State v. Linton*, 156 Wn.2d 777, 783, 132 P.3d 127 (2006)); U.S. CONST. amend. V; WASH. CONST. art. I, § 9). While it is appropriate for the State in a single proceeding to charge and try multiple counts arising from the same criminal conduct, courts may not "enter multiple convictions for the same offense without offending double jeopardy." *State v. Womac*, 160 Wn.2d 643, 658, 160 P.3d 40 (2007) (citations omitted). The State concedes that is what happened here with the second-degree assault convictions in count 2,

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intentional assault recklessly inflicting substantial bodily harm, RCW 9A.36.021(1)(a), and count 3, intentional assault with a deadly weapon, RCW 9A.36.021(1)(c).

The trial court's finding of same criminal conduct does not eliminate the violation. *Id.* at 659. "'Conviction in itself, even without imposition of sentence, carries an unmistakable onus which has a punitive effect ... .'" *Id.* at 658 (quoting *State v. Johnson*, 92 Wn.2d 671, 679, 600 P.2d 1249 (1979)).

The remedy here is to vacate one of Mr. Standley's convictions for assault second degree against Mr. Beeman.

C. COUNSEL PROVIDED EFFECTIVE ASSISTANCE. THE SENTENCING COURT PROPERLY DETERMINED MR. STANDLEY'S OFFENDER SCORE AND STANDARD RANGE BECAUSE MR. STANDLEY'S CONVICTIONS FOR ASSAULT ON MS. HEDRICK, FELONY HARASSMENT, AND UNLAWFUL IMPRISONMENT DID NOT CONSTITUTE "SAME CRIMINAL CONDUCT."

Convictions involving "same criminal conduct" are calculated as one crime for sentencing purposes. RCW 9.94A.589(1)(a). "Same criminal conduct . . . means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim." *Id.* "Unless all elements are present, the offenses must be counted separately." *State v. Chenoweth*, 185 Wn.2d 218, 220, 370 P.3d 6 (2016) (citing *State v. Porter*, 133 Wn.2d 177, 181, 942 P.2d 974 (1997)).

1. The trial court did not err when it failed to find sua sponte three of the crimes Mr. Standley committed against Ms. Hedrick inside her vehicle constituted same criminal conduct.

Mr. Standley did not ask the trial court to consider whether his convictions for second-degree assault (count 2), felony harassment (count 4), and unlawful imprisonment (count 5) constituted same criminal conduct. RP 85–145, 343–366.

Although a defendant may challenge an offender score calculation for the first time on appeal when the alleged error is a legal error, *see, e.g.*, *State v. McCorkle*, 137 Wn.2d 490, 495-96, 973 P.2d 461 (1999), failure to raise a matter involving trial court discretion waives the issue. *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 874, 50 P.3d 618 (2002); *In re Pers. Restraint of Shale*, 160 Wn.2d 489, 494, 158 P.3d 588 (2007). Whether a series of crimes constitute same criminal conduct requires the trial court to make factual determinations and exercise its discretion. *State v. Nitsch*, 100 Wn. App 512, 523, 997 P.2d 1000 (2000). "It is not merely a calculation problem, or a question of whether the record contains sufficient evidence to support the inclusion of out-of-state convictions in the offender score." *Id.* A myriad of problems flows from appellate review of same criminal conduct without the benefit of the trial court's consideration. *Id.* at 524. These can include arguments on appeal

inconsistent with arguments raised at sentencing, a potential unwarranted windfall to a defendant when "[l]apses of memory [at the trial court level] or changes in prosecutorial or judicial personnel may then work to his advantage, and . . . finality is postponed." *Id.*

Further, sentencing courts should not be required "to search the record to ensure the absence of an issue not raised." *Id.*

> In the same criminal conduct context, such a search requires not just a review of the evidence to support the State's calculation, or a review to ensure application of the correct legal rules, but an examination of the underlying factual context in every sentencing involving multiple crimes committed at the same time. Because this is not the legislature's directive, the trial court's failure to conduct such a review sua sponte cannot result in a sentence that is illegal.

Id. at 524–25. "The trial court thus should not be required, without invitation, to identify the presence or absence of the issue and rule thereon." *Id.* at 525. Here, the trial court had no opportunity to make the required factual determinations and exercise its discretion. Mr. Standley waived this issue. The trial court did not err.

2. *Defense counsel was not ineffective for having failed to assert same criminal conduct for second-degree assault (count 2), felony harassment (count 4), and unlawful imprisonment (count 5) because second-degree assault and felony harassment involve different statutory intents and because the unlawful imprisonment occurred at a different time and place than the assault and felony harassment.*

Whether a defendant has been denied effective assistance of counsel is assessed by the two-pronged analysis outlined in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The first prong is whether counsel's representation "fell below an objective standard of reasonableness." *Strickland,* 466 U.S. at 688. Assuming, arguendo, counsel's performance was deficient in failing to ask the trial court to consider whether the three counts at issue here constituted same criminal conduct, whether Mr. Standley is entitled to relief depends upon whether he can satisfy *Strickland's* second prong, prejudice. *Strickland,* 466 U.S. at 691. Prejudice is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland,* 466 U.S. at 694. Here, it is highly unlikely the trial court would have concluded Mr. Standley's convictions for second-degree assault, felony harassment, and unlawful imprisonment constituted same criminal conduct.

A "'same criminal conduct' finding favors the defendant by lowering the offender score below the *presumed* score." *State v. Aldana Graciano*, 176 Wn.2d 531, 539, 295 P.3d 219 (2013) (emphasis in original). Because it favors the defendant, it is the defendant's burden to establish the statutory finding. *Id.* "This statutory inquiry arises generally in cases where a defendant commits only one act." *Chenoweth*, 185 Wn.2d

at 221. Courts narrowly construe RCW 9.94A.589(1)(a) "to disallow most claims that *multiple offenses* constitute the same criminal act." *Graciano,* 176 Wn.2d at 540 (emphasis added).

The question in a same criminal conduct analysis is "whether two convictions warrant separate punishments." *Chenoweth*, 185 Wn.2d at 222. When, as here, multiple criminal acts occurred at the same time and place and involved the same victim, courts focus on statutory criminal intent. *Id.* In this context, statutory intent "is not the particular *mens rea* element of the particular crime, but rather is the offender's objective criminal purpose in committing the crime." *State v. Adame*, 56 Wn. App. 803, 811, 785 P.2d 1144, *review denied*, 114 Wn.2d 1030 (1990). Acts, or even a single act, "comprised of separate and distinct statutory criminal intents . . . do not meet the [statutory] definition of 'same criminal conduct.'" *Chenoweth,* 185 Wn.2d at 222.

Chenoweth, a five-four decision, is a substantial departure from prior rulings on how to assess same criminal conduct. *Id.* at 225–39 (Madsen, C.J., dissenting). The *Chenoweth* Court looked only to "statutory intent"—the intent identified by language in the criminal statutes under which Mr. Chenoweth was convicted: rape of a child in the third degree, RCW 9A.44.079, and incest, RCW 9A.64.020. *Id.* at 223.

a. The statutory intent for second-degree assault is separate and distinct from those of harassment and unlawful imprisonment.

A person is guilty of second-degree assault if he "intentionally assaults another and thereby recklessly inflicts substantial bodily harm." RCW 9A.36.021(1)(a). The common law definition of "assault" is found in Washington's pattern jury instructions. *See State v. Smith*, 159 Wn.2d 778, 781–82, 154 P.3d 873 (2007).

> An assault is an *intentional touching or striking* of another person, with unlawful force, that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 35.50, at 547 (3d ed. 2008) (WPIC) (emphasis added). A person is guilty of harassment if he, without lawful authority, knowingly threatens immediate or future bodily injury to another. RCW 9A.46.030(a)(i).

State v. Ferrer, No. 47687-8-II, 2016 Wash. App. LEXIS 1952 (Aug. 16, 2016),[3] is one of two cases as of this writing to apply Chenoweth's approach to the question of whether second-degree assault and felony harassment constitute same criminal conduct. Mr. Ferrer was

[3] Cited pursuant to GR 14.1 This decision has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate. *Crosswhite v. Wash. Dep't of Social and Health Services*, 197 Wn.App. 539, 544 , __ P.3d.__ (2017).

charged with second-degree assault for severely beating his estranged wife about the face and with felony harassment for threatening to kill her if she continued divorce proceedings. *Id.* at 3. A jury convicted Mr. Ferrer of one count of second-degree assault and one count of felony harassment. *Id.* at 6. The Court of Appeals, Division Two, agreed with the trial court—Mr. Ferrer's "objective intent in assaulting Ms. Ferrer was to harm her, to establish some bodily injury[,] not to legitimize the threat to kill." *Id.* at 10. "The evidence supports the trial court's finding that Ferrer had different intents when he committed second-degree assault and then felony harassment." *Id.* at 11.

State v. Baza, No. 48541-9-II, 2017 Wash. App. LEXIS 365 (Feb. 14, 2017),[4] is the more recent application of *Chenoweth's* approach to the question of whether second-degree assault and felony harassment constitute same criminal conduct. Mr. Baza was convicted of second-degree assault (strangulation), felony harassment, and violation of a no-contact order. *Baza*, 48541-9-II at 2. Mr. Baza told the victim she was going to die as he strangled her. *Id.* Again following *Chenoweth's* analytical framework, Division Two, "first look[ed] to the underlying

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statutes to determine whether the intents of each statute, if any, are the same or different for each crime." *Id.* at 5. "Harassment required that Baza "knowingly threaten" his victim." *Id.* at 7 (citing RCW 9A.46.020(1)(a)). Under the facts of that case, "second-degree assault require[d] that a person intentionally assault another." *Id.* (citing *State v. Reed*, 168 Wn. App. 553, 574, 278 P.3d 203 (2013) (quoting RCW 9A.36.021(1)(g)); WPIC 35.19.01). The Court held: "To knowingly threaten someone is a distinct intent from intentionally assaulting someone, so that these crimes do not involve the same criminal intent." *Id.* at 7–8.

The methamphetamine and heroin Mr. Standley ingested before and during his ferocious, hour-long assault on Ms. Hedrick complicates the analysis of this issue here. Mr. Standley's accusations and extreme violence appear to have arisen from his own disordered mind and not from anything Ms. Hedrick did. Mr. Standley battered Ms. Hedrick in an enraged miasma of jealousy over her alleged infidelity and fury that she might have taken more of their heroin than he did. RP 94–95. Telling her she was not worthy of the boots he bought her, he pulled those boots from her feet and used one to hit her in the face. RP 98–99. He was punishing her for not living up to his standards. His objective, his intent, was assault.

Mr. Standley's threats to kill Ms. Hedrick if she tried to escape or call law enforcement had a different statutory intent, to knowingly

threaten harm in the future. RCW 9A.46.030(a)(i). He told her if she ran, the cops would show up and she would see a shoot-out. RP 142. At some point in his drugged fog, he came to believe this was a certainty. He told Ms. Hedrick, she would not see another sunrise. RP 143. He told her to write a letter to her family because they were both going to die. *Id.* Ms. Hedrick understood she was not to run, to go anywhere, or to bring attention to the car. *Id.* As Division Two pointed out, knowingly threatening someone is a distinct intent from intentionally assaulting that person.

Neither is second-degree assault the same criminal conduct as unlawful imprisonment. A person is guilty of unlawful imprisonment if he or she knowingly restrains another person. RCW 9A.40.040. Knowingly restraining someone is a distinct intent from intentionally assaulting that person. Ms. Hedrick was unable to get out of her car during the assault because she was sitting on the passenger side and the child-lock device prevented the doors from being opened by anyone but the driver. RP 132–33. Nothing in the record, however, points to Mr. Standley being responsible for where Ms. Hedrick was sitting when they returned to the car.

Rather, the unlawful imprisonment was ongoing, from when Mr. Standley told Mr. Hedrick there would be a shootout with the cops if she

escaped, through the trip across town where Mr. Standley prevented her from talking with anyone at the JoAnn's Fabric Store and at the market where they stopped for cigarettes.

b. Under the facts of this case, harassment is not the same criminal conduct as unlawful imprisonment because the time and place of each crime differ.

"[E]ach of a defendant's convictions counts toward his offender score unless he convinces the court that they involved the same criminal intent, time, place, and victim. *Graciano*, 176 Wn.2d at 540 (citing RCW 9.94A.589(1)(a)). "[T]he defendant bears the burden of both production and persuasion." *Id.* Failure to prove any element precludes sentencing as same criminal conduct. *Id.* (citing *State v. Maxfield*, 125 Wn.2d 378, 402, 886 P.2d 123 (1994)).

Under the facts of this case, counsel's performance was not deficient, especially in light of the court's ruling on Mr. Standley's evidentiary objection. As the trial judge correctly pointed out, the acts unlawfully restraining Ms. Hedrick occurred during a different time and in a different place than the assault and threats to kill that took place in the Impala before sunrise. RP 105. After leaving the Impala, the couple started walking to the Beeman house on Hill Street. RP 104. They stopped at a store around 9:00 a.m. so Ms. Hedrick could use the restroom and remove

some extra clothing she had been wearing. RP 103–04. It was a one-person restroom. RP 106. Mr. Standley told her he was not going to let her go to the restroom by herself and followed her inside. RP 104. Ms. Hedrick was too afraid to try to talk with anyone in the store. *Id.* They went together to another store to buy cigarettes. RP 130. During the hour-long walk, Mr. Standley never left Ms. Hedrick alone. RP 130–31.

Under these facts, counsel's failure to ask the court to consider unlawful imprisonment the same criminal conduct as his assault and harassment was not deficient performance. It was Mr. Standley's burden to prove his unlawful imprisonment took place at the same time and place as the assault and harassment. *Graciano*, 176 Wn.2d at 420. He could not do this, and it would have been fruitless even to try. Further, there would have been no likelihood of success, considering the court's evidentiary ruling.

D. SHOULD THIS COURT AWARD COSTS TO THE STATE IF IT PREVAILS ON APPEAL? (ASSIGNMENT OF ERROR NO. 24)

The State does not intend to seek costs on appeal.

IV. CONCLUSION

This Court should remand to the trial court for vacation of one count of second degree assault against Mr. Beeman and for determination of whether sufficient evidence in the record supports supplementation of any missing or deficient findings of fact or conclusions of law.

DATED this 27th day of June, 2017.

Respectfully submitted,

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 34753-2-III
	)	
vs.	)	
	)	
CHRISTOPHER GLEN STANDLEY,	)	DECLARATION OF SERVICE
	)	
Appellant.	)	
	)	

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Jodi R. Backlund
Manek R. Mistry
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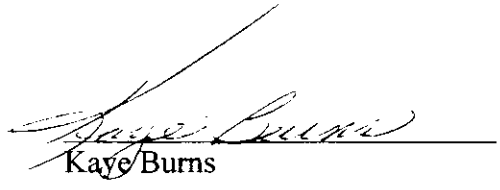
Dated: June 27, 2017.



Kaye Burns

GRANT COUNTY PROSECUTOR'S OFFICE

June 27, 2017 - 2:03 PM

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